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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 409

HERBERT MEZO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

HERBERT MEZO,
Pro Se.

SUPREME COURT OF THE UNITED STATES

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No. 409

HERBERT MEZO,

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PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Statement.

This is a criminal case, in which the People of the State of Illinois, were the Plaintiff's, and Herbert Mezo, alias "Herb" Mezo, et al., were the Defendants, Herbert Mezo, charged with Murder, was sentenced to the Penitentiary for his natural life, as was the Defendant Morgan, but the Defendant Ridley, after being granted a separet trial, was released on bond, then released without trial.

It will be observed from the Judgment (R. 22-30), and the Courts Charge to the Jury (R. 13-22), that the standard practice, and procedure, also good ethics at law, were ignored, as was the Constitution, and was one of those the Illinois, Attorney General calls Kangaroo Courts, because they ignore the Constitution; And because the defendants

were poor persons at the time of trial and defense Counsel was appointed by the Court, and the one taking the lead was a candidate for State's Attorney, and thought it more profitable for himself, to show the voting public that he was a good prosecutor, the consequences were that, no Motion to quash the Indictment; no opening statement to the jury; no Motion to exclude the forced and forged confession as evidence, he only objected to its use; would not let the Petitioner take the witness stand, or call any of 16 witnesses that were subpoena in his behalf; made no Motion for a direct verdict, or arrest of Judgment; took no exceptions to any ruling or action, of the Court; and withdrew the Motion for a new trial without permission from the Petitioner; So under this lax and Kangaroo, procedure in the trial court, the Petitioner is deprived of the report of the proceedings, as the trial Judge refused to grant a Motion to extend the time in which to get the report transcribed, and a bill of exceptions certified by him.

Therefore the rules of this Court, in this Statement can not be fully complied with; And the Confession, and all other exhibits have been deleted from the court Clerk's Record, Why,???

However, this does not alter the Petitioner's Constitutional Rights.

(A) The statutory provision believed to sustain the jurisdiction in this Court, is the fact that the Petitioner, was deprived of Due Process of Law, in the trial court, and the Judgment of the trial court was affirmed by the Illinois State Supreme Court, which is un-Constitutional.

(B) Where the Petitioner, was compelled to be a witness against himself, by a forced and forged confession, obtained in jail behind locked and bared doors, with no one present except the Sheriff, and his Deputies, this is

in violation of the 5th, and 6th, Amendments to the United States Constitution, and Sections 9 and 10 of Article II of the Illinois State Constitution; and where the Jury was improperly instructed, as to whether the confession was voluntarily made, and where the said confession was obtained as set forth above, it is in violation of Chap. 38. sec. 379. (Compelling Confession) § 161, Illinois Statutes; And where the jury was improperly instructed, by omiting the Manslaughter instructions in a homicide case, it was in violation of Chap. 38. sec. 373. (Burden of Proof.) § 155, Illinois Statutes, see, *People* v. *Papas*, 44 N. E. 2d. 8 P. 896, 899, and the cases cited thereunder, in the Illinois State Supreme Court; The above violations in instructing the jury, are in violation of the Due Process of Law, clause in the 5th, and 14th Amendments, also the 13th Amendment, which provides that the party shall have been duly convicted; They are also in violation of sec. 2 and 19 of Article II, Illinois State Constitution.

(C) The date of the judgment in the trial court is January 18, 1936, and after over eight years of opposition, and oppression, it was to have been reviewed, May 15, 1944, on writ of error, in the Illinois State Supreme Court, Defendant in error, opposed by Motion, to strike the Record, Abstract, Brief, and Affirm the judgment of the trial court; The Motion was granted on May 9, 1944, and judgment was Affirmed; The date of application for writ of Certiorari is August 20, 1944.

The nature of the case, and the rulings of the State Courts are of such as to bring the case under jurisdictional provisions of this Court, and similar cases believed to sustain jurisdiction are cited.

Ashcraft v. *State of Tennessee*, 391 U. S. 921, 935, 64 N. R. S. 13;

Berdeau v. *McDowell*, 256 U. S. 465, 475, 41 S. Ct. 574, 65 L. Ed. 1048, 13 A. L. R. 1159;

Brown v. *Walker*, 161 U. S. 591, 596, 16 S. Ct. 644, 646, 40 L. Ed. 819;

Bram v. *United States*, 168 U. S. 532, 544, 18 S. Ct. 183, 187, 42 L. Ed. 568;

Chambers v. *Florida*, 309 U. S. 227, 237, 60 S. Ct. 472, 477, 84 L. Ed. 716;

Counselman v. *Hitchcock*, 142 U. S. 547, 573, 12 S. Ct. 280, 35 L. Ed. 1110;

Canty v. *Alabama*, 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988;

Lisenba v. *California*, 314 U. S. 219, 236, 238, 62 S. Ct. 280, 289, 290, 86 L. Ed. 166;

Lomax v. *Texas*, 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511;

McNabb v. *United States*, 318 U. S. 332, 341, 63 S. Ct. 608, 613, 87 L. Ed. 819;

Polko v. *Connecticut*, 302 U. S. 319, 325, 326, 58 S. Ct. 149, 151, 152, 82 L. Ed. 288;

Vernon v. *Alabama*, 313 U. S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513;

Ward v. *Texas*, 316 U. S. 547, 555, 62 S. Ct. 1139, 1143, 86 L. Ed. 1663;

White v. *Texas*, 310 U. S. 530, 531, 532, 60 S. Ct. 1032, 1033, 84 L. Ed. 1342;

Wilson v. *United States*, 162 U. S. 613, 622, 16 S. Ct. 895, 899, 40 L. Ed. 1090;

Wood v. *United States*, 75 U. S. App. D. C. 274, 128 F. 2d. 265, 271, 141 A. L. R. 1318;

Ziang Sung Wan v. *United States*, 266 U. S. 1, 15, 45 S. Ct. 1, 3, 4, 69 L. Ed. 131;

The Petitioner, now states the grounds upon which it is contended that the questions involved are susbtantially the same as in the cases cited above.

The fact that the conviction violated the 5th, 6th, 13th, and 14th Amendments to the United States Constitution, and the Supreme Court of Illinois, granted Defendant in error's Motion to strike the Record, Abstract, Brief, and Affirm judgment of the trial Court, made the State Supreme Court a accomplice in the violations, and the Judge of the trial court, and the Judges of the State Supreme Court, violated their oath of office, to support the Constitution of the United States, and the Constitution of the State of Illinois, (Chap. 37. sec. 11. Oath of Office.) § 6. Illinois Statues.

The State Supreme Court's granting of the aforesaid Motion, based on grounds that there were no bill of exceptions with the records, which are required in criminal cases by, sec. 259.70A. Chap. 38. Illinois Statues, was illegal as this requirement went into effect November 25, 1941 five years and 10 months after trial; At the time of trial there were, sec. 204. Chap. 110. Illinois Statues, which went into effect January 1, 1934, and was in effect until superseded by sec. 259.70A. Chap. 110. which was applied "Retroactive" in this case; This case was covered by, (quote) Chap. 110. sec. 204. (Exceptions) No formal exceptions need be taken to any ruling or action of the court in any matter or proceeding, in order to make such ruling or action a ground for review. S. H. A. 110. § 204; J. A. 104.080. [End quote.]

By applying sec. 259.70A. Chap. 110 of Illinois Statues to this case it was "Retroactive" consequently it was used as *Ex Post Facto Law,* which is forbidden by Article I. Section 9. of the United States Constitution, and Article II. Sec. 14 of the Illinois State Constitution; And it was

in strict violation of Section 1. of the 14th Amendment to the United States Constitution, as it does Abridge the Privileges of review of the process in this case, which can not possibly be considered a Due Process of Law, after considering the violations of State Statutes, in instructing the jury.

As this case is being brought from a State Court, it will now be stated that in the court of first instance it reached the stage of sentencing the petitioner to the Penitentiary for his natural life.

And in the Appellate Court; in Illinois, a criminal case goes direct to the State Supreme Court, on writ of error, which reached the stage of a review on May 15, 1944, but it was termated by a Motion granted to Defendant in error, on May 9, 1944 and the granting of said Motion, calls for sound judicial discretion in this Court.

The Federal questions sought to be reviewed in the State Court, were that the Petitioner, had been forced to make a confession, (to be a witness against himself) contrary to the 5th Amendment to the United States Constitution, also Article II. Sec. 10. Illinois State Constitution, (compelled to give evidence against himself), also that the conviction was not a Due Process of Law, which is contrary to the 5th, and 14th, Amendments to the United States Constitution, also contrary to Article II. Sec. 2. of the Illinois State Constitution.

Where the Sheriff and his Deputies set themselves up as a *quasi judicial* tribunal, holding the petitioner incommunicado, in the jail behind locked and bared doors, without the presents of any neutral person, and in so doing rendered a trial, (the necessary evidence) before the trial court, and the jury of peers, which were a mere formality, in open court, and a consequent conviction; This is not a

Due Process of Law, and is in violation of the 5th, 6th, 13th, and 14th Amendments to the United States Constitution, and Article II. Secs. 2 and 10. of the Illinois State Constitution.

All questions were raised in the State Court, by assignment of error, as there were no exceptions taken during the trial, and no extension of time was granted on the Motion filed by Attorney R. E. Smith, in which to present a bill of exceptions, (R. 12) this time should have been granted where the defendant was a poor person at the time of trial, and could not obtain the necessary funds for an appeal until it was apparent that the soldiers bonus would be paid, the attitude of the trial Judge on this Motion, shows prejudice, had the proceedings in his court been a Due Process of Law, he would not have cared how many times the case was appealed, but as it was it was subject to a reversal, and he knew it, he did not instruct the jury, on the voluntary question of the confession, (R. 20) he only leads them to believe that if one was made it was voluntarily.

According to Sec. 204. Chap. 110. Illinois Statues, there were no need of exceptions being taken at the time of this trial in January 1936 to be entitled to a review, but if there was, that would be one more reason why the petitioner did not get, Due Process of Law.

A law, or rule requiring a bill of exceptions, as the State Court did in this case, was contrary to the 14th Amendment to the United States Constitution, for where such requirement is enforced as in this case, it does abridge the privileges, and immunities of this United States Citizen, due to the fact, that he has been deprived of his liberty, without Due Process of Law, and it would further deprive him, or deny him of the equal protection of the laws, and

such requirement could not be construed as being in Pursuance of the requirements of the United States Constitution. (Supreme Law of the Land.)

The Petitioner is unable financially, to employ the aid of Counsel.

HERBERT MEZO,
Petitioner, Pro Se.

SUPREME COURT OF THE UNITED STATES
OF AMERICA

OCTOBER TERM, 1944

No. 409

HERBERT MEZO, *Petitioner,*

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

Petition and Brief.

Now comes the Petitioner, Herbert Mezo, also known as Herb Mezo, who says that he is now confined in the Illinois State Penitentiary at Menard, Randolph County, State of Illinois.

That he is being detained, Restrained, and deprived of his Liberty by virtue of a Judgment unduly rendered from the Circuit Court of Williamson County, State of Illinois, on the 18th, day of January 1936, in cause No. 2837—Murder.

He avers that his conviction, and subsequent detention, is the result of gross violation of his Constitutional rights, while at the mercy of the Sheriff, and His Deputies intriguing, which resulted in bist and prejudice proceedings in the trial court; Which was later Affirmed by the State Supreme Court upon dictation from the office of Attorney General George F. Barritt, Defendant in error, and Counsel for the Supreme Court of the State of Illinois.

It is further avered by the petitioner that the Illinois Statutes were not complied with in his case; That the trial Judge omitted the Manslaughter instructions to the jury, which is required in Homicide cases, in which the jury is the sole judges of the turpitude of the crime if the defendant is guilty; The verdict may be, not guilty; Manslaughter one to 14 years; Murder any number of years not less than 14; or natural life, in the Penitentiary; or Death by electricution; Therefore the conviction was not a Due Process of Law, in the trial court, and such conviction is in violation of the 5th, 13th, and 14th Amendments to the United States Constitution.

And it is further avered, that where the petitioner was held Incommunicado, and Intrigued for 12 to 14 hours without food or water, and forced a so-called confession which was later forged by adding an unsigned sheet to the signed sheet, which proved to be a false pretenses, and not the original, this is in violation of the 5th, 6th, and 14th, Amendments to the United States Constitution.

It is further avered, that the Supreme Court of Illinois did not support the Constitution of the United States, but instead violated it, when Defendant in error's Motion, (to strike the Records, Abstract, Brief, and Affirm Judgment of the trial court,) was granted, and the Judgment of the trial court was Affirmed.

The principal question before this Court, is whether the State Supreme Court, decided the following Constitutional questions as this Court would;—nor be compelled in any criminal case to be a witness against himself;—the accused shall enjoy the right to a speedy and Public trial, by an impartial jury;—and to have the Assistance of Counsel for his defense;—No State shall make or inforce any law which shall abridge the privileges or immunities of Citizens of the United States;—nor shall any State deprive any person of life, liberty, or property, without Due Process

of Law;—nor deny any person within its jurisdiction the equal protection of the Laws;—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States;—And whether this Court will uphold the Illinois State Supreme Court, in the use of a law, or rule that is in violation of Article I. Section 9.—No Bill of Attainder or Ex Post Facto Law shall be passed.

It should be remembered by this Court, that the Defendant in error in the State Supreme Court made no effort to disprove Plaintiff in error's claim to a merited, right, and just reversal in the State Supreme Court, but relied on a Motion, which was so worded that the entire four moves were directed to the Trial Court; The first move was directed to the Court; The second move was proceeded by the word "Further" and followed by the words "Trial Court"; The next two moves were proceeded by the word "Further"; Giving the expressed meaning that the entire four moves in the Motion was directed to the trial court, despite its being entitled to the Supreme Court of the State of Illinois, it was out of jurisdiction, and null, and void.

The Constitutional questions were not stressed to any great extent in the State Supreme Court, for this reason, it will be found in, *People* v. *Chiafreddo,* Ill. 44 N. E. 2d. 888, That, A Constitutional question will not be considered if the case can be decided without doing so.; However the forced, and forged confession was assigned, and argued as error, also that the conviction was not a Due Process of Law, and of course these questions, involve the violation of the 5th, 6th, 13th, and 14th, Amendments to the United States Constitution, and Article II, Sections 2, 9, 10, and 19, of the Illinois State Constitution.

So under these circumstances, the question of error in instructing the jury in the trial court, was stressed, and

will be Briefed; Now we call the Court's attention to the Indictment, (R. 1) after reading count one, bearing in mind that the co-defendant Ridley, was not there at the time of the shooting, and was not on trial with the Petitioner, and the defendant Morgan, how did the jury find the two, guilty in manner and form, as charged in the indictment, it would be impossible; Now to the Judgment, (R. 28) it will be found that the Attorneys for the defendants withdrew their Motion for a New Trial, and that the Judgment, and sentence of the Court was entered, then on (R. 28) we find that the Petitioner Mezo, was to be delivered to the Warden of said Penitentiary; and the Warden of said Penitentiary being present in open Court; Then we find that the Jury return into open court with their verdicts, and that the verdicts were read in open court and filed in this cause; (then after the verdicts were read;) the Defendants Attorneys, Gordon Franklin, and R. W. Harris, move the Court to grant a new trial in said cause; (there were no action taken on this Motion); we find on (R. 29) that this cause is hereby commanded to take the body of the said Herbert Mezo, alias "Herb" Mezo, and confine him in safe and secure custody after his delivery thereto for his natural life, the same being the penalty fixed by the Jury in this cause;—(This is the third certified copy, and they all read the same); The Court's attention is called to the instructions to the jury, (R. 13-22) besides leaving out the manslaughter, instruction, they are not as provided by, Chap. 110. sec. 67. Illinois Statues, (quote)— They shall be in writing, in the form of a continuous and connected narrative and not a series of separate instructions (end quote). This Court will note the lack of good ethics at law, and a proper defense, by Defense Counsel, Gordon Franklin, and George T. Carter, as provided by Chap. 38, sec. 730, Illinois Statutes, which says the Court

shall appoint one or more competent Counsel for an indigent defendant in a capital case.

The above trial court procedure can never be considered as a Due Process of Law, and does not support the findings of the Illinois State Supreme Court, (R. 32-33) which reads as tho the petitioner, (then plaintiff in error) was given a review; but the purpose of the Motion, granted in behalf of the Defendant in error was to prevent the review; So the Petitioner invokes Constitutional Law, which stands as a bar against the conviction of any individual in an American court by means of a coerced confession, or without due process of law. U. S. C. A. Const. Amend. 14.

The Petitioner herein, deposes and says that he has prepared, and read the above petition, and that the allegations therein are true, except those on information, and these he verily believes to be true.

Subscribed and sworn to before me, a Notary Public in and for Randolph County, State of Illinois.

HERBERT MEZO,
Petitioner, Pro Se.

On the 18th day of Aug. 1944, A. D.

My Commission Expires on the 29 day of Nov. 1945, A. D.

J. L. LAWDER,
Notary Public.

[SEAL.]

INDEX.

BRIEF.

Annexed to Petition.

First, this Court will find, due to the fact that the Courts below are of the class, the Illinois Attorney General, condemned in his Constitution talk as being Kangaroo Courts, because they ignored the Constitution, and that many phases in the trial court were evaded or omitted, in order to further the Kangaroo principles in the procedure.

(B) And despite the condemnations made by Attorney General, George F. Barrett of such courts, his Assnt. Dictated an Affermance order, called a Motion; This Court will find that the two notices received by the petitioner, stating that the Motion had been granted, to strike certain parts of the record, Abstract, Brief, and Affirm the Judgment of the trial court, Do not corspond with, coverup proceedings as recorded with the trial court records, see (R. 33).

(C) A statement of the grounds on which the jurisdiction of this Court is invoked.

Where the Petitioner's conviction was in violation of the 5th, 6th, 13th, and 14th, Amendments to the United States Constitution, this raises a fedral question and the United States Supreme Court is bound to make an examination of the petitioners' claims, where the violations consist of a forced and forged confession, which turned out to be an imposter, and not the original, and the trial procedure was not a Due Process of Law.

(D) A statement of the case containing all that is material to the consideration of the questions presented.

The fact that the confession has been deleted, or withheld from the record, it will be necessary to refer to the instruc-

tions (R. 20), and a Motion, based on grounds of the confession (R. 11-12).

Indictment (R. 1-9).

Motion for a separate trial (R. 10-12).

Instructions to the Jury (R. 13-22).

Verdict (R. 29).

Judgment (R. 22-30).

Statement, of the trial Judge, and State's Attorney (R. 30-31).

Motion for extension of time in which to present bill of exceptions (R. 12).

Writ of Error, and Affirmance Order in Criminal Caues (R. 32-33).

(E) A specification of such of the errors as are intended to be urged.

1. The forced and forged, or coerced confession; Which proved to be an imposter, and was forged by adding an unsigned sheet.

2. The Indictment; Which is so worded that it is not understandable by the average class of People, that are called as Jurors.

3. A Motion for separate trial, based upon grounds that the coerced evidence would be unduly prejudicial to the co-defendant Hilton Ridley.

4. The Instructions to the Jury; They are not in the form of a continuous and connected nariative, but are in a series of separate instructions; And none contain a manslaughter Instruction.

5. The Verdict: Which reads, guilty in manner and form as charged in the Indictment, this If based on facts, was impossible.

6. The Judgment: (R. 28) Attorney Gordon Franklin withdrew the Motion for a New Trial, and Judgment, and sentence of the Court was entered; (R. 29) the Warden of said Penitentiary being present in open court; then the Jury returned into open court with their verdicts, and the verdicts were read in open court and filed in this cause, (Judgment and sentence was entered before the verdict was returned and read) (R. 29). Attorneys Gordon Franklin and R. W. Harris move the Court to grant a New Trial, (there was no action taken on this move) (R. 29), this cause is hereby commanded to take the body of the said Herbert Mezo.

7. Statement of trial Judge and State's Attorney: They admit that the deceased Man did make the assault, (provocation) which is contrary to the charge in the Indictment.

8. Motion for extension of time in which to present a bill of exceptions; refusal to grant this Motion showed a biased and prejudiced attitude of the trial Judge.

9. Writ of Error, and Affermance Order, by Illinois State Supreme Court; In which *ex post facto law*, was applyed, and Honored.

F.

Argument.

1. The Confession is in violation of Chap. 38, Sec. 379, Illinois Statutes, also the 5th, 6th, and 14th Amendments to the United States Constitution.

2. The Indictment is not in the terms and language of the statutes or so plainly that the nature of the offense may be easily understood by the Jury, Chap. 38, Sec. 716, Illinois Statutes, 5th, 14th Amend. Const.

3. The Motion for a separate trial by the co-defendant Hilton Ridley is listed only as evidence of the fact that there were a confession.

4. The Instructions to the Jury were not in the form as provided for in Chap. 110, Sec. 67, Illinois Statutes, and 5th and 14th Amend. Const., nor were they in accordance with Chap. 38, Sec. 373, Illinois Statutes, the Court omitted the instruction as to a possible manslaughter verdict, not Due Process of Law, U. S. C. A. Const., Amend. 5 and 14.

5. The Verdict is not in accordance with Chap. 38, Sec. 367, Illinois Statutes, despite the fact that the State proved, that the deceased Man provocated the killing. The verdict was result of the manufactured evidence, the "confession," and violated 5, 6, 13, and 14 Amend. Const.

6. The Judgment shows that the trial Judge had no or very little regard for the constitutions, that he was required to take oath to support, Chap. 37, Sec. 11, Illinois Statutes, and Article 6, Par. 3 of the United States Constitution. And the State's Attorney is representative of all the People, including the Defendant, and his Official Oath requires him to safeguard constitutional rights of defendant in criminal cases as those of any other Citizen.

People v. *Sweetin,* 325 Ill. 245, 156 N. E. 354.

7. The Statement of the trial Judge, and State's Attorney: They admit that the deceased Man made the assault, (provocation) which is contrary to the charge in the Indictment, and old and new defense evidence will prove self-defense.

8. The Motion for extension of time in which to present a bill of exceptions is only listed to show this Court that

the Petitioner did not accept the conviction as a Due Process of Law, and started appeal actions as soon as funds could be had, but again the Judge showed prejudice, and that he had something to cover up, so denied the Motion.

9. The Writ of Error and Order of Affirmance by the Illinois State Supreme Court: The fact that the Judgment in this case was rendered while, [quote] Chap. 110, Sec. 204, § 80. (Exceptions.) No formal exceptions need be taken to any ruling or action of the Court in any matter or proceeding, in order to make such ruling or action a ground for review. [end quote], this section of the Illinois Statutes was approved June 23, 1933, and went into effect January 1, 1934. However, Defendant in error, opposed the writ of error, by Motion to strike certain parts of the Record, the Abstract, the Brief, and to Affirm Judgment of the trial Court. The aforesaid Motion was based upon grounds that there were no Bill of Exceptions filed with the Record, as required by Chap. 110, Sec. 259.70A. Record in writ of error—Criminal cases. [quote] In all criminal cases in which writ of error is brought the bill of exceptions or report of proceedings at the trial, if it is to be incorporated in the record on review, shall be procured by the plaintiff in error and submitted to the trial judge or his successor in office for his certificate of correctness, or where this is impossible because of the absence from the district, sickness or other disability of such judge, then to any other judge of said court, and filed in the trial court, within fifty (50) days after judgment was entered, or within such time thereafter as shall, during such fifty (50) days, be fixed by the court, or in such further time as may be granted within any extended time. [end quote.] This later sec. went into effect November 25, 1941, five years and 10 months after judgment was rendered in this

case, and as applied, and upheld in this case, it was used "Retroactive," or as *Ex Post Facto Law,* which is prohibited by U. S. Const., Article I, Sec. 9—No Bill of Attainder or *ex post facto* Law shall be passed, Illinois State Const., Article II, Sec. 14, no *ex post facto* law,—shall be passed.

U. S. Const., Article 6, Par. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;—shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. See Par. 3.—

U. S. Constitution, Amend. 14, Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Since Sec. 259.70A of Chap. 110, Illinois Statutes is in violation or is contrary to the safeguarding provisions of the 14th Amend. Const., it is not in Pursuance of the Constitution, consequently it is Notwithstanding, and the Affirmance Order together with the Judgment should be reversed and remanded.

(F)1. The confession, it would be absurd to believe that the so-called law enforcement, and court Officials would prepare and leave records incriminating their selves. The absence of the so-called confession is *prima facie* evidence of its legality, and that there were fear of an indictment for forgery, as there is no Statute of limitations on forgery

in Illinois. However, the Motion for a separate trial shows that one was used, and the allegations as to how the confession, and admission was obtained was never denied by the Sheriff, or State's Attorney, and the Court's charge or instructions to the Jury, shows that one was used, but the Court wholly and completely in his charge ignored the theory that the alleged confession made were not freely and voluntarily made. Where the petitioner was held incommunicado, and was without food or water, and questioned, intimated, threatened, and mistreated for 12 or 14 hours, the questions answered sure were not voluntarily, the Sheriff and his Deputies set themselves up as a *quasi judicial* tribunal and tried, and convicted the defendant there and in so doing rendered a trial, before the trial court, and the jury of peers, a mere formality; Id., The Third Degree, p. 170; cf. *Chambers* v. *Florida,* 309 U. S. 227, 238, 60 S. Ct. 472, 477, 84 L. Ed. 716.

Where no part of the confession was the original; a forged imposter could not be used as legal evidence; *White* v. *Texas,* 310 U. S. 530, 531, 532, 60 S. Ct. 1032, 1033, 84 L. Ed. 1342.

See the following cases which are the same or similar to this case:

Ashcraft v. *State of Tennessee,* 391 U. S. 921, 935, 64 N. R. S. 13;

Canty v. Alabama, 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988;

Lisenba v. California, 314 U. S. 219, 236, 238, 62 S. Ct. 280, 289, 290, 86 L. Ed. 166;

Lomax v. *Texas,* 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511;

Polko v. *Connecticut,* 302 U. S. 319, 325, 326, 58 S. Ct. 149, 151, 152, 82 L. Ed. 288;

Vernon v. *Alabama,* 313 U. S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513;
Ward v. Texas, 316 U. S. 547, 555, 62 S. Ct. 1139, 1143, 86 L. Ed. 1663;

And many others, as well as such text books dealing with lawlessness in Law Enforcement, (Wickersham Commission), and others cited in a recent case, *Ashcraft* v. *Tennessee,* and this case should be dealt with accordingly.

(F)4. The Instructions to the Jury: They are not in the form required by Sec. 67 of Chap. 110, Illinois Statutes, which says that they shall be in a continuous and connected narrative. They are in a series of separate instructions. And none contain a manslaughter instruction as should have been done in a Homicide case, in the State of Illinois and the following citations are given. See Section 367 and 373 of Chap. 38, Illinois Statutes, and the following cases decided in the Illinois State Supreme Court on such an error.

Beacon v. *People,* 293 Ill. 210, 127 N. E. 386;
Bleich v. *People,* 227 Ill. 80, 81 N. E. 36;
DeRea v. *People,* 378 Ill. 557, N. E. 2d 1;
Lynn v. *People,* 170 Ill. 527, 48 N. E. 964;
Pursley v. *People,* 302 Ill. 62, 134 N. E. 128;
Panton v. *People,* 114 Ill. 505, 2 N. E. 411;
Papas v. *People,* —— Ill. ——, 44 N. E. 2d, 8. 896;
Scalisi v. *People,* 324 Ill. 131, 154 N. E. 715;

It is the settled rule in homicide cases that if there is evidence in the record which, if believed by the jury, would reduce the crime to manslaughter, an instruction defining manslaughter should be given.

The State Supreme Court, has ruled that the defendant was entitled to the benefit of any defense shown by the

evidence, even if inconsistent with his own testimony; The Court, has repeatedly ruled that, in a case tried by a jury it is the province of the jury, not the Judge to decide the guilt or innocence of the accused. It is equally the province of the jury to decide whether or not the accused is guilty of murder, or the lesser crime of manslaughter, if there is *any evidence* which *tends* to prove the lesser rather than the grater crime. And have repeatedly rejected instructions which, as a matter of law, took the decision of this question from the jury.

The People's evidence showed that the deceased man fired six rounds from a 38 special S&W Revolver, wounding both defendants. As contended in the indictment, the deceased died instantly from count one, this contention in the indictment, is confirmed by the verdict of the jury, "in manner and form". From these facts it can be concluded that the homicide was provocated by the deceased man. Then the defendant was entitled to have submitted to the jury any defense which any testimony, or any other evidence, tended to prove. However, under the instructions given, the jury had no alternative than to find him guilty of murder, or not guilty. The province of the jury to determine the weight of the testimony of the various witnesses and other evidence was definitly invaded by the Court's failure to give the instruction defining the crime of manslaughter and an instruction as to the form of the verdict for that offense.

In *People* v. *Scalisi,* supra, the Court said that the accused is entitled to the benefit of any defense based on the evidence, even though such defense is inconsistent with his own testimony. The Court there said (page 145 of 324 Ill., page 721 of 154 N. E.): Plaintiffs in error were entitled to have the jury instructed not only as to the law applicable to the state of facts testified to by them, but ap-

plicable to any state of facts which the jury might legitmately find from the evidence to have been proven."

Could the petitioner have waived his Constitutional rights, where the traitorous defense Counsel Gordon Franklin, accepted improper jury instructions; The petitioner, was not a Lawyer, and did not know what was lawful, Attorney Franklin, had given orders to keep quite, that he was our mouth piece; It is true that sec. 67. Chap. 110. Illinois Statues says that all suggestions or objections must be made before the jury retires from the Bar, or they will deemed to have been waived; They could not have been waived by the petitioner as he knew nothing of such a law or rule; A defendant could not be held responsible for what the Court, State's Attorney, and Court appointed defense Counsel, *is by law*, responsible for; It is alleged in this case that Attorney Gordon Franklin, sold the petitioner down the river, to assist his friend, Sheriff Carter, and to further his own political ambition, as he was a candidate for State's Attorney, at the time, and what record we have of the proceedings show that, by his lack of actions or omissions, did more for the prosecution, than he did for the defense.

If a trial court Judge is required to take oath to support the Constitution of the United States, and the Constitution of the State of Illinois, and is the umpire, or legal adviser of the court, then he should know what is lawful, and see that Counsel on either side stay within the law, (Constitution supreme Law) a trial Judge would not be fulfilling his oath of office, inless he safegarded a defendants Constitutional rights.

A United States Citizen, is not required by the Constitution, or Statue, to be a law college graduate, then a defendant that has not studied law, could not know how to coach his defense Counsel, (which is required to be compedent) neither would he know when the prosecution was

within the limits of the law, or when he should correct the Judge as to the law, and the defendants lawful rights.

Therefore, some State laws, or court rules, as applied in some cases, as has been done in this case, is misconstrued, or not in Pursuance of the Constitution, and are Contrary, and notwithstanding.

It appears that the purpose of the Constitution was to safeguard those Citizens that find it necessary thru verious reasons to take up verious walks of life other than studing law, if all Citizens were required to know as much about law as the Lawyer, what need would there be for the law profession, and there would not be such a need for all executive and judicial Officers, both of the United States and the several States, to be bound by Oath or Affirmation, to support the Constitution.

The fact that it makes it a Federal offense for any public official to take away the civil rights of any Citizen without Due Process of Law'' as has been done in this case, by the law inforcement, and court, officials in Williamson County, Illinois, and in which the Illinois State Supreme Court, conspired by Affirming Judgment of the Trial Court.

The Petitioner, in humbly submiting his crude and unprofessional like, Petition and Brief, Prays that the Honorable Court not be unfavorably influenced, or that the Court will not be prejudiced by the blackened repetition of the petitioner, which was brought about by the manufactured evidence, and that the Good Court will take upon its self the burden of reversing and remanding the case to the trial Court, that it may come thru as a Due Process of Law.

Or does the Constitution mean as much now, to an ex-service man of World War I., as it did when he was defending it. It is sincerely believed, and hoped that it does in this Court.

HERBERT MEZO,
Petitioner, Pro Se.

The Petitioner is unable to employ the aid of Counsel, and is interceding in his own behalf. And is filing on Brief alone.

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